



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

NOV 25 2008

Ref: 8ENF-W

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**#7003-2260-0001-7778-1795**

Fallon County Commissioners  
Deb Ranum, Chairperson  
P.O. Box 846  
Baker, MT 59313-0846

Re: Baker Lake Project Removal and  
Restoration Plan, Findings of Violation and  
Administrative Order for Compliance,  
Docket No. CWA-08-2006-0032

Dear Ms. Ranum:

This letter concerns the restoration plan required by the U.S. Environmental Protection Agency's (EPA) Findings of Violation and Administrative Order for Compliance (Order), Docket No. CWA-08-2006-0032, issued to you on July 17, 2006. A copy of the Order is enclosed with this letter. The Order was issued in response to unauthorized discharges of dredged and fill material to Baker Lake, Upper Baker Lake, and their adjacent wetlands. We have completed our review of the Baker Lake Project Removal and Restoration Plan (Plan). The Plan, dated August 6, 2008, was prepared by Roger Perkins of Aquoneering, Billings, Montana, in response to EPA's Order referenced above. The Plan does not address the violations identified in Section II of the Order and does not satisfy the requirements specified in Section III of the Order regarding development and implementation of a restoration plan.

EPA has clearly communicated on several occasions that full restoration is required in all impacted areas, including additional restoration in areas that have not fully self-restored, and removal of the fill on the Afrank property. During a conference call on December 12, 2007, among Monica Heimdal and Wendy Silver of EPA, Fallon County (County) Attorney Rich Batterman, and the County's consultant Roger Perkins, EPA noted to Mr. Perkins and Mr. Batterman that the Order requires the County to develop a plan that identifies all of the impacts of the unauthorized discharges of dredged and fill material and sets forth the steps that will be taken to restore or mitigate for the impacts. The Plan submitted in August 2008 is woefully deficient in this regard. In addition, during the December 2007 call, EPA explained that



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mitigation rather than restoration will only be considered if it is demonstrated that restoration is not possible. The Plan does not make this demonstration with regard to any of the unauthorized fill.

Furthermore, during the December 2007 conference call, Mr. Perkins acknowledged EPA's desire that the fill on the Afrank property be removed, and there was discussion of an acceptable upland site where the fill could be relocated. Removal of the Afrank fill was agreed to by the County as early as July 2006, and in an email to Mr. Batterman dated April 4, 2008, Ms. Silver reiterated the requirement. In spite of this, the Plan proposes to leave the fill in place.

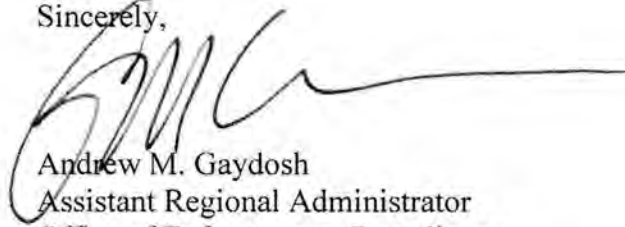
Finally, with regard to the unauthorized work that resulted in the destruction of the cattail fringe in Baker Lake, EPA made it clear during the December 2007 conference call that the cattails had to be fully restored unless the County submitted photographic evidence that the affected areas have fully self-restored. After the U.S. Army Corps of Engineers reported in March 2008 that self-restoration of the cattails was sporadic, Ms. Silver informed Mr. Batterman that EPA expects additional restoration. The Plan does not include any such restoration.

EPA is not providing specific comments on the Plan because the Plan is inadequate and unresponsive to both the requirements of the Order and repeated requests to provide an acceptable restoration plan for EPA review. EPA recommends that the County and its consultant review the requirements of the Order. Please note that, in accordance with paragraphs 6 and 7 of Section III of the Order, the restoration plan must address the removal of dredged and fill material from Baker Lake, Upper Baker Lake, their adjacent wetlands, and any other impacted areas, and restoration of all impacted areas to their pre-impact condition and grade. In addition, the restoration plan must include the information listed in paragraph 7 of Section III of the Order and provide for completion of the restoration of the impacted areas within 60 days of EPA approval of the restoration plan. EPA will provide specific comments to Fallon County once a restoration plan is submitted that fully addresses the requirements of the Order.

Within 45 days of receipt of this letter, please submit to EPA for review and comment a restoration plan that fulfills the above requirements and meets all terms of the Order. Please be reminded that, as indicated in Paragraph 16 of Section III of the Order, section 309(d) of the Clean Water Act (CWA), 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Paragraph 16 of the Order also sets forth information on additional enforcement mechanisms available to EPA for violations of the CWA. Failure to submit a quality restoration plan that addresses all terms of the Order will result in escalation of enforcement, including the potential referral of this matter to the United States Department of Justice.

Due to the serious legal ramifications of your continued non-compliance with the Order, I urge your prompt attention to this matter. If you have any questions concerning this letter, please contact Monica Heimdahl, Enforcement Officer, at 303-312-6359. You or your attorney may also direct legal questions to Wendy Silver, Enforcement Attorney, at 303-312-6637.

Sincerely,

A handwritten signature in dark ink, appearing to be 'AG', with a long horizontal line extending to the right.

Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Tina Artemis, Regional Hearing Clerk  
Albert R. Batterman, Fallon County Attorney (w/enclosure)  
Roger Perkins, Aquoneering (w/enclosure)  
David L. LaGrone, U.S. Army Corps of Engineers  
Allan Steinle, U.S. Army Corps of Engineers



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

CERTIFIED MAIL #7005 0390 0000 4845 4258  
RETURN RECEIPT REQUESTED

JUL 17 2006

Ref: 8ENF-W

Fallon County Commissioners  
Donald Rieger, Chairman  
P.O. Box 846  
Baker, MT 59313-0846

Re: Findings of Violation and  
Administrative Order for Compliance  
Docket No. CWA-08-2006-0032

Dear Mr. Rieger:

Based on our review of all available information, the United States Environmental Protection Agency (EPA) has determined that Fallon County, a political subdivision of the State of Montana, is in violation of the Clean Water Act, as amended (CWA). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 CFR § 328.3.

Specifically, Fallon County has discharged dredged or fill material into waters of the United States without authorization under the CWA. These discharges of pollutants to Baker Lake, Upper Baker Lake, and their adjacent wetlands have occurred at property owned by Fallon County in section 13, Township 7 North, Range 59 East, Fallon County, Montana. Baker Lake, Upper Baker Lake, and their adjacent wetlands are part of a continuous tributary system that enters Sandstone Creek. Sandstone Creek enters O'Fallon Creek, which enters the Yellowstone River.

Enclosed is an EPA Region 8 administrative order which specifies the nature of the violations and describes actions necessary in order for Fallon County to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The order requires Fallon County to inform EPA in writing, within five days of receipt, of its intent to fully comply with the order.



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The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Enforcement Attorney, at 303-312-6637 and Monica Heimdal, Enforcement Officer, at 303-312-6359.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure (Findings of Violation and Order for Compliance)

cc: Tina Artemis, EPA, Regional Hearing Clerk  
John L. Arrigo, Montana Department of Environmental Quality  
Albert R. Batterman, Fallon County Attorney  
David L. Lagrone, U.S. Army Corps of Engineers  
Allan Steinle, U.S. Army Corps of Engineers  
John Wardell, EPA, Montana Operations

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2006 JUL 17 AM 9:00

RECEIVED  
EPA REGION 8  
JUL 17 2006

IN THE MATTER OF: )  
 )  
Fallon County, a Political Subdivision of )  
the State of Montana )  
Baker, MT 59313 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**FINDINGS OF VIOLATION AND  
ADMINISTRATIVE ORDER FOR  
COMPLIANCE**

Docket No. CWA-06-2006-0032

**I. STATUTORY AUTHORITY**

This Findings of Violation and Administrative Order for Compliance ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

**II. FINDINGS OF VIOLATION**

1. Respondent Fallon County is a political subdivision of the State of Montana.  
Respondent's primary offices are located at 10 West Fallon Avenue, Baker, Montana.

2. At all relevant times, Respondent owned, controlled, managed, and/or operated property that includes Baker Lake, Upper Baker Lake, and their adjacent wetlands located in section 13, Township 7 North, Range 59 East, Fallon County, Montana.
3. Baker Lake, Upper Baker Lake, and their adjacent wetlands are part of a continuous tributary system that enters Sandstone Creek. Sandstone Creek enters O'Fallon Creek, which enters the Yellowstone River. The Yellowstone River is, and was at all relevant times, a navigable, interstate water.
4. Beginning in or about January 2005, Respondent or persons acting on Respondent's behalf commenced construction work on Baker Lake. The work involved:
  - a. Excavation, including removal of emergent wetland vegetation extending an average of 30 feet into the lake, and/or fill of approximately 11,000 feet of lakeshore to a 3:1 slope. Excavated material was pushed with bulldozers and stockpiled below the ordinary high water mark ("OHWM") of Baker Lake; and
  - b. Placement of dredged or fill material below the OHWM in certain places where the shoreline slope exceeded 3:1. The dredged or fill material so placed averaged 5 feet in depth, extended over approximately 1330 feet of shoreline, and extended approximately 20 feet into the lake; and
  - c. Placement of dredged or fill material in the lake bed in front of a private residence. The dredged or fill material so placed covered an area approximately 400 feet by 40 feet; and
  - d. Placement of approximately 74,000 cubic yards of material removed from Baker Lake into a deposition area between Baker Lake and Upper Baker Lake partially

comprised of wetlands. The exact amount of dredged or fill material in the wetlands is not known.

5. On February 15, 2005, a private citizen notified the U.S. Army Corps of Engineers ("Corps") that wetlands around Baker Lake were being impacted by construction activities.
6. On February 16, 2005, the Corps met with three Fallon County Commissioners to discuss the work being performed at Baker Lake.
7. On February 17, 2005, the Corps issued a cease and desist order to the Fallon County Commissioners, notifying them that the work performed at Baker Lake was an apparent violation of the CWA and requiring them to cease any further unauthorized work. The Corps further requested that they provide detailed information regarding the work performed at Baker Lake.
8. On February 24, 2005, Respondent responded to the Corps' cease and desist order and submitted information, a site map, and photographs pertaining to the work performed at Baker Lake.
9. On March 9, 2005, the Corps performed an inspection of Baker Lake and confirmed that Respondent had discharged or allowed the discharge of dredged and/or fill material in the areas of Baker Lake described in paragraph 4 of Section II of this Order.
10. On March 14, 2005, Respondent submitted an application to the Corps for a Section 404 permit for activities already completed at Baker Lake including cleaning (vegetation and silt removal) and sloping 2.3 miles of shoreline, at an average width of 60 feet; fill placement along a shoreline roadway; and fill placement along the north and northeast

shore of the lake. The permit application also requested authorization to place 3500 - 6000 cubic yards of rip rap along 5240 feet of shoreline of Baker Lake and "a small section" of Upper Baker Lake.

11. On March 16, 2005, the Corps sent a letter to Respondent requesting additional information be submitted in order to process the permit application.
12. By letter dated April 14, 2005, Respondent provided some of the information requested in the Corps' March 16, 2005, letter and informed the Corps that the Respondent had installed a new boat ramp with rip rap protection, measuring 35 feet x 60 feet x 0.5 feet, in Baker Lake.
13. On September 20, 2005, the Corps documented evidence of recent and current construction activities that appeared to have resulted in new discharges of dredged or fill material to the shoreline and adjacent wetlands of Upper Baker Lake and Baker Lake.
14. The discharges described in paragraphs 4, 12, and 13 of Section II of this Order resulted in the elimination of more than 8.6 acres of wetlands and other waters of the United States. The wetlands and other waters provided various functions and values such as water quality improvement, including sediment filtration; aquatic, waterfowl, and songbird habitat; groundwater recharge; ecology education; recreation; and aesthetics.
15. The discharges described in paragraphs 4, 12, and 13 of Section II of this Order were performed using common earthmoving vehicles and equipment, which were operated by Respondent or by somebody on behalf of Respondent.
16. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. The discharged dredged and fill materials referenced in paragraphs 4, 12, and 13 of Section II of this Order are and were at all relevant times “dredged material” and “fill material” within the meaning of 33 C.F.R. § 323.2(c) and 33 C.F.R. § 323.2(e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
18. The vehicles and equipment described in paragraph 15 of Section II of this Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
19. Baker Lake, Upper Baker Lake, and their adjacent wetlands referenced in paragraphs 2 and 3 of Section II of this Order are and were at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
20. The placement of dredged and fill material into Baker Lake, Upper Baker Lake, and their adjacent wetlands constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
21. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.
22. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.

23. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.
24. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 4, 12, and 13 of Section II of this Order.
25. The activities conducted by Respondent and/or its agents as described in paragraphs 4, 12, and 13 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).
26. The removal of the dredged and fill material illegally discharged into waters of the United States at Respondent's property and restoration of the impacted shorelines of Baker Lake, Upper Baker Lake, and their adjacent wetlands to a condition that closely approximates their conditions and functions prior to the discharge of the dredged and fill material can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.
27. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA,

33 U.S.C. § 1251(a). The removal and restoration described in paragraph 26 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondent's unauthorized activities.

28. This Order was issued after consultation and coordination with the Corps' Omaha District.

### **III. ORDER**

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.
2. Within five (5) calendar days of receipt of this Order, Respondent shall inform EPA in writing of Respondent's intent to fully comply with the Order. EPA requests that Respondent meet with EPA within fourteen (14) calendar days of issuance of this Order if there are concerns or questions about the requirements of the Order. The scheduling of such a meeting shall not alter Respondent's responsibility to meet any of the deadlines

specified in this Order unless otherwise clearly stated in a written communication to Respondent by EPA.

3. Upon EPA approval of the restoration plan required by paragraph 6 of Section III of this Order, Respondent shall remove all dredged and fill materials that were discharged as a result of the violations identified in this Order and restore the impacted shorelines of Baker Lake, Upper Baker Lake, their adjacent wetlands, and any other impacted areas to their pre-impact condition and grade, unless otherwise approved by EPA in the restoration plan.
4. All dredged and fill material removal and restoration activities shall be conducted in accordance with an EPA-approved restoration plan prepared by a consultant experienced in wetland restoration. The consultant also shall directly supervise all work performed pursuant to the EPA-approved restoration plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.
5. All dredged and fill material removal and restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in wetland restoration. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.
6. Within sixty (60) calendar days of receipt of this Order, Respondent shall submit to EPA for review and comment a restoration plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for removing the discharged dredged and fill

material from Baker Lake, Upper Baker Lake, their adjacent wetlands, and any other impacted areas and restoring all impacted areas to their pre-impact condition and grade.

7. The restoration plan shall be prepared in accordance with "U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans," attached hereto as Exhibit A. In addition, the restoration plan shall include:

- a. A complete assessment of the impacts to Baker Lake, Upper Baker Lake, and their adjacent wetlands due to the Respondent's discharges of dredged and fill material;
- b. A detailed work plan and schedule for all of the work to be accomplished, as specified in the restoration plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than sixty (60) days after EPA approves the restoration plan;
- c. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map of these locations;
- d. Grading, planting, and monitoring plans, measurable criteria for success of restoration, and provisions for proper disposal of any excess soils or other materials generated during removal and restoration;
- e. Detailed professional drawings of all of the work to be accomplished, as specified in the restoration plan, including plan and profile drawings with control <sup>points</sup> elevations; and

- f. A description of all costs necessary to complete the work to be accomplished by the restoration plan, including the costs of consultations, permits, monitoring, and construction.
- 8. EPA will review the restoration plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the restoration plan, Respondent shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.
- 9. Upon receiving EPA's written approval of the restoration plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence all restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.
- 10. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 9 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers  
10 West 15th Street, Suite 2200  
Helena, MT 59626  
Telephone: 406-441-1375  
Facsimile: 406-441-1380

11. Respondent shall submit two (2) copies of the restoration plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
Telephone: 303-312-6359  
Facsimile: 303-312-6409

A copy of the restoration plan, all notifications, and related correspondence also shall be provided to:

Wendy Silver, 8ENF-L  
U.S. Environmental Protection Agency, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
Telephone: 303-312-6637  
Facsimile: 303-312-6953

A copy of the restoration plan also shall be provided to the Corps at the address noted in paragraph 10 of Section III of this Order.

12. In addition to the notification requirement set forth in paragraph 11 of Section III of this Order, after issuance of any Corps authorization for restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.
13. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance

with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

14. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of EPA or its contractors, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, the Montana Department of Environmental Quality, and Montana Fish, Wildlife and Parks, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:
  - a. To inspect and monitor progress of the activities required by this Order;
  - b. To inspect and monitor compliance with this Order; and
  - c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

15. Respondent's obligations under this Order are joint and several. This Order shall be effective upon receipt by Respondent.
16. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500 per day for each violation which occurred on or before March 15, 2004, and \$32,500 per day for each violation thereafter, of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Order.

Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

17. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 14<sup>th</sup> day of July, 2006.



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

## **Exhibit A**

U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION VIII

SECTION 404 ENFORCEMENT:

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan. When these guidelines are incorporated into an EPA Administrative Order, the recipient of the Order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

## II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.
- B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how the equipment will gain access to the site to perform the work; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material (note: as a rule, transplanting of plant stock will not be permitted); the planting method(s) and scheme (i.e., physical layout of how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.
- C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

## III. Actual Restored Physical Conditions

- A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seeding activities.

#### IV. Monitoring/Measures of Success

- A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to five years, depending upon the scope and complexity of the remedial efforts required.
- B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.
- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

#### V. Inspections

- A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.